

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5399 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT and
MR.JUSTICE A.K.TRIVEDI

=====

1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

UNITED INDIA INSURANCE CO LTD

Versus

BHARTIBEN BALMUKUND JOSHI

Appearance:

MR PV NANAVALI for Petitioner

CORAM : MR.JUSTICE Y.B.BHATT and
MR.JUSTICE A.K.TRIVEDI

Date of decision: 17/12/1999

ORAL ORDER

1. This is an appeal under Section 173 of the Motor Vehicles Act, 1988, wherein the only appellant is the Insurance Company (original opponent no.3).

2. Learned Counsel for the appellant seeks to address us on the question affecting the merits of the impugned award. Obviously, this is a contention on questions of fact and is not confined to the statutory

defences available to the Insurance Company.

3. The Supreme Court has laid down the specific principle in the case of SHANKARAYYA AND ANR. V. UNITED INDIA INSURANCE CO.LTD reported in AIR 1998 SC 2968, that before an Insurance Company can be permitted to take up defences which are available to the owner and driver of the vehicle, an application has to be made to the Tribunal under Section 170 of the Motor Vehicles Act, 1988, and an order with reasons be obtained on the application. In short, even if the Tribunal grants permission under Section 170, it cannot be without application of mind, and the grant of such permission in favour of the Insurance Company must be supported by reasons.

This decision of the Supreme Court has further been followed by a Division Bench of this Court in the case of UNITED INDIA INSURANCE CO.LTD V. HETALBHAI C. BAGADIA reported in 1999 (1) G.L.H. 539.

4. On the facts of the case, we find that the Insurance Company had made an application to the Tribunal for permission to take up defences available to the owner and driver, which application was for obtaining the permission of the Tribunal specifically under Section 170 of the said Act. This application was specifically objected by the other side by an objection endorsed on the said application. On this application, the Tribunal passed an order"

" Permission is granted under the Motor vehicles Act, Section 170."

5. We do not see this order of the Tribunal as an order granting permission with reasons contemplated by Section 170 as interpreted by the Supreme Court in SHANKARAYYA'S case (Supra).

6. Learned Counsel for the appellant submits that once an application is granted specifically under Section 170 of the said Act, it ought to be interpreted to mean that it complies with the requirements of the Section. This submission goes in the face of the principles laid down by the Supreme Court in Shankarayya's case (Supra). The factual situation is that the order is still an order without reasons. Consequentially, this order fails to meet the test laid down in Shankarayya's case (Supra).

7. In the premises aforesaid, the Insurance Company

cannot be permitted to take up non statutory defences and to challenge the impugned judgment and award on merits. This appeal is therefore summarily dismissed. The amount deposited in the Registry by the appellant shall be transmitted to the Tribunal forthwith.

stanley-ybb